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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/901,713	07/28/97	BELL A	400-009

QM11/1117

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EXAMINER	
FOSTER, J	

ART UNIT	PAPER NUMBER
3728	7

DATE MAILED: 11/17/98

Please find below and/or attached an Office communication concerning this application or pr ceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No. 08/901,713	Applicant(s) Bell
	Examiner J. Foster	Group Art Unit 3728

☒ Responsive to communication(s) filed on *Sep 8, 1998* .

☒ This action is **FINAL.**

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire *three* month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) *1-26* is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) *1-26* is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐approved ☐disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____ .

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____ .

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-26 are finally rejected under 35 U.S.C. § 103(a) as being unpatentable over Lindsay (4,993,551) in view of Berry et al (4,880,315). In the reference of Lindsay, the tool holder 10 may be considered to define a utility apron. The apron/holder includes a shell 20,22,24 with a lip portion 20 for contacting the lip of a bucket 12 to support the shell on the bucket. The exterior surface of the apron is at 24 and includes a plurality of pockets 28 disposed thereon. In addition, the interior surface of the apron is at 22 and includes a plurality of pockets 26 disposed thereon.

Although the reference of Lindsay does not disclose specific sizes for the pockets 26 and 28 of the holder 10, it would have been obvious to have made the pockets with any sizes desired, including the sizes claimed by Applicant, since it has been held that the particular size of an article generally will not support patentability. In re Rose, 105 USPQ 237, 240 (CCPA 1955); In re Yount, 80 USPQ 141.

The reference of Berry et al suggests at 28,30 and 36,38 using elastic bands at the opening of pockets for tools or implements, such as scissors and nail clippers. It is apparent that the elastic bands would provide a function of resiliently

restricting the pocket openings for providing retention of contents in the pockets but permitting enlargement of the openings under an opening force which pulls the pocket material from the backing for allowing contents in the pockets to be removed. Accordingly, it would have been obvious in view of Berry et al to have provided elastic bands at the openings of the pockets 26,28 of Lindsay for the purpose of resiliently retaining the tools in the pockets.

3. Claims 1-26 are finally rejected under 35 U.S.C. § 103 as being unpatentable over the references as applied to claims 1-26 above, and further in view of Kikas (3,116,773). The reference of Kikas discloses that elastic pocket openings permit expansion thereof for easy access for removing and replacing articles in the pockets (col 1, line 70 - col. 2, line 2). Accordingly, for this same function it further would have been obvious in view of Kikas to have provided the elastic band at the opening of each of the pockets 26,28 of Lindsay.

4. Applicant's arguments filed September, 8, 1998 have been fully considered but they are not deemed to be persuasive. Applicant has argued that the references of Berry et al and Kikas are non-analogous art since they not concerned with tool aprons, i.e. they are not in the same field of endeavor. The examiner responds that the reference *are* in the same field of endeavor as Applicant's tool apron and the tool apron of Lindsay since tool aprons, compartmented handbags and utility bags all are generally bags with compartments, concerned with the same general function of storing items for use. Accordingly, Berry et al and Kikas are analogous references.

Moreover, the references of Berry et al and Kikas are concerned with the same particular problem and solution as Applicant: i.e. how to automatically close pockets in a flexible storage container. For this additional reason Berry et al and Kikas are analogous references.

Applicant has argued that the cases of In re Rose and In re Yount regarding unpatentability of mere change of size does not apply to the Applicant's invention. The examiner disagrees. The references applied in the rejection disclose aprons or pouches having pockets. The pockets will have some size to them for receiving their contents. The reference of Lindsay, in particular, clearly shows using pockets of different sizes for holding articles of different sizes, with larger articles (pliers) being in the larger pockets and smaller articles (drill bits) being located in the smaller pockets. One of ordinary skill in the art would have found it obvious from Lindsay that a pocket can be made with any size to be large enough to receive its content, including the sizes claimed by Applicant. Accordingly, the holding of In re Rose that change in size is ordinarily an unpatentable change applies in the case of Applicant's claimed invention.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO

EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

JIMMY G. FOSTER
PRIMARY EXAMINER
GROUP 3728 11/13/98

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November 13, 1998